

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 28, 2006 Session

IN RE T.B.L.

**Appeal from the Chancery Court for Cheatham County
No. 12403 Leonard W. Martin, Chancellor**

No. M2005-02413-COA-R3-PT - Filed on June 2, 2006

This appeal involves the termination of the parental rights of the biological father of a two-year-old child. The child's mother and her husband filed a petition in the Chancery Court for Cheatham County seeking to terminate the biological father's parental rights and to approve the husband's adoption of the child. Following a bench trial, the trial court granted the petition and terminated the father's parental rights on the ground of abandonment. The father appealed. We have determined that the order terminating the father's parental rights must be vacated because the appellate record is insufficient to enable this court to review the trial court's decision.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated and
Remanded**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN, J., and JERRY SCOTT, SR. J., joined.

Paul A. Rutherford and Wende J. Rutherford, Nashville, Tennessee, for the appellant, M.J.L.

Jerry W. Hamlin, Ashland City, Tennessee, for the appellee, D.M.D.

OPINION

I.

Teenagers M.J.L. and J.D.D. had a non-marital child, T.B.L., on January 28, 2003. They lived together briefly after the child was born but then separated. T.B.L. remained in the custody of his mother, J.D.D., but M.J.L. maintained a relationship with the child as well. For an indeterminate period of time, M.J.L. voluntarily paid child support to J.D.D.¹

M.J.L. and J.D.D. did not have a good relationship after they separated. M.J.L. abused alcohol, and J.D.D. asserted that he physically abused her. After J.D.D. obtained an order of protection, M.J.L. stopped paying child support and became involved in criminal activities that

¹The record contains no order establishing parentage or directing M.J.L. to pay child support.

eventually resulted in his incarceration. The parties disagree about whether M.J.L. continued to visit J.D.D. until he was incarcerated in September 2004.

On December 3, 2004, J.D.D. married D.M.D. When M.J.L. was released from jail approximately one month later, he made no effort to cultivate a relationship with T.B.L. or to pay any child support to J.D.D. On February 1, 2005, J.D.D. and D.M.D. filed a petition for a step-parent adoption in the Chancery Court for Cheatham County, alleging that M.J.L. had abandoned T.B.L. and that permitting D.M.D. to adopt T.B.L. would be in the child's best interests.

M.J.L., who had returned to jail on February 18, 2005, sent a handwritten answer to the trial court clerk's office as well as a letter asking that he be kept advised of the status of the case. He was released from jail on May 17, 2005, and appeared in court on June 6, 2005, in response to a motion to compel discovery. On that occasion, the trial court advised M.J.L. that it would be appropriate for him to retain a lawyer and that if he did not, he would be held to the same standards as parties who had retained a lawyer.

Subsequently, M.J.L. filed a motion for an extension of time for discovery, but that motion was denied when he did not appear in court to argue the motion. When the case was heard on September 19, 2005, M.J.L. requested the trial court to appoint him a lawyer, but the trial court refused. Following a bench trial, the trial court entered an order on September 21, 2005, terminating M.J.L.'s parental rights and granting D.M.D.'s petition to adopt T.B.L. M.J.L. thereafter retained counsel and filed a notice of appeal.

II. THE ADEQUACY OF THE RECORD ON APPEAL

Because of the constitutional dimension of the rights at stake in a termination of parental rights proceeding, appellate courts must be provided with an appellate record complete enough to enable them to fairly consider the merits of the issues the parent chooses to raise on appeal. *M.L.B. v. S.L.J.*, 519 U.S. 102, 128, 117 S. Ct. 555, 570 (1996). The State must provide an adequate record in all cases in which the parent whose rights are at stake is indigent, including termination proceedings that have been commenced by private parties. *L.D.N. v. R.B.W.*, No. E2005-02057-COA-R3-PT, 2006 WL 369275, at *4-5 (Tenn. Ct. App. Feb. 17, 2006) (No Tenn. R. App. P. 11 application filed); *In Re: Adoption of J.D.W.*, No. M2000-00151-COA-R3-CV, 2000 WL 1156628 at *4 & n.5 (Tenn. Ct. App. Aug. 16, 2000) (No Tenn. R. App. P. 11 application filed).²

Although “[a] record of sufficient completeness does not translate automatically into a complete verbatim transcript,” *Mayer v. City of Chicago*, 404 U.S. 189, 194, 92 S. Ct. 410, 414 (1971), statements of the evidence will rarely suffice because of the burden of proof in termination

²When the parent whose rights are at stake is indigent, this court will not conclusively presume that the trial court's findings of fact are supported by the evidence and are correct. *In re J.D.W.*, 2000 WL 1156628, at *3. However, when a parent who is not indigent fails to provide an adequate transcript, we will presume that the record supports the trial court's findings. See, e.g., *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005).

of parental rights proceedings and the fact-intensive nature of the appeals. *L.D.N. v. R.B.W.*, 2006 WL 369275, at *5. The lawyer representing D.M.D. has acknowledged this principle and has candidly conceded that the record in this case is inadequate to enable this court to review the trial court's order.³ Accordingly, we vacate the judgment and remand the case for a new trial. Following the remand, the trial court should take steps to ascertain whether M.J.L. is indigent. If he is indigent, the trial court should then take steps to assure that an adequate record of the further proceedings in the trial court is preserved.

III.

ADDITIONAL PROCEDURAL SAFEGUARDS IN TERMINATION PROCEEDINGS

Because another trial will be required in this case, it would be appropriate for the trial court to make sure that the record reflects that all the applicable statutory and constitutional requirements for a valid termination of parental rights proceeding have been satisfied. Included among these requirements are: (1) the appointment of a guardian ad litem for the child unless the termination is uncontested, (2) the appointment of a lawyer for M.J.L. if he is indigent, and (3) the preparation of an order that meets all the requirements of Tenn. Code Ann. § 36-1-113(k) (2005).

As far as this record shows, the trial court did not appoint a guardian ad litem for T.B.L. despite its statutory obligation to do so, even in the absence of a request. Tenn. S. Ct. R. 13 § 1(d)(2)(D). Similarly, the record contains no evidence that the trial court advised M.J.L. of his right to be represented by a lawyer and of his right to have a lawyer to represent him if he is indigent.⁴ Tenn. S. Ct. R. 13 § 1(d)(2)(B); *see also Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 31, 101 S. Ct. 2153, 2161-62 (1981); *In re J.D.W.*, 2000 WL 1156628, at *4-6.

As a final matter, the gravity of the consequences of terminating a parent's parental rights requires the courts to engage in individualized decision-making. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999). Accordingly, Tenn. Code Ann. § 36-1-113(k) (2005) explicitly requires trial courts to "enter an order which makes specific findings of fact and conclusions of law" whether they have been requested to do so or not. *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004). When a trial court fails to comply with Tenn. Code Ann. § 36-1-113(k), the appellate courts vacate the order and remand the case for the preparation of the required findings of fact and conclusions of law. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). The September 21, 2005 order contains little more than a recitation of the statutory requirements for the termination of parental rights. If this case is tried again, the final order should comply with Tenn. Code Ann. § 36-1-113(k).

³D.M.D.'s lawyer's actions are consistent with the highest professional standards governing the practice of law. Candor is not inconsistent with zealous advocacy.

⁴The record indicates that on June 6, 2005, the trial court suggested that M.J.L. should retain a lawyer but never informed him that he was entitled to a court-appointed lawyer if he was indigent.

IV.

For the reasons stated herein, we vacate the September 21, 2005 order and remand the case to the trial court for further proceedings consistent with this opinion. We tax the costs in equal proportions to M.J.L. and his surety and to D.M.D. for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.